



Domestic Violence in India: An Analytical Study

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Abstract

Domestic violence at home is a gender-based violence, intending on subordinating women. The global dimensions of domestic violence are of great concern, both in terms of their scope and extent. Section 498A of Indian Penal Code was introduced in the year 1983 to protect married women from being exposed to cruelty by the husband or his relatives. In the 1980s the women's movements in India foregrounded the issue of violence against women with a special emphasis on dowry related violence suffered by married women. Under the provisions of criminal law, while the perpetrator of domestic violence could be prosecuted and punished, women's need for shelter, maintenance, custody of children and compensation remained unaddressed. The issue of "domestic violence" must not necessarily remain domestic. The notion of domestic violence must be taken out from the "private sphere" and politicized.

Key word: Domestic violence, psychological harm, genuine obstacle, cruelty, safeguard, harasses etc.

Introduction

Domestic violence at home is a form of gender based violence intending on subordinating women. The global dimensions of domestic violence are of great concern, both in terms of their scope and extent. Domestic violence is perhaps the most universal, yet one of the most invisible forms of violence against women. No country or society can claim to be free of domestic violence, but the patterns and trends may vary across regions and countries. Domestic violence is indeed a human rights issue and genuine obstacle to advancement. The Vienna convention of 1969¹ and the Beijing Declaration and the stage for movement 1995² have recognized passing of the protection of Woman against Domestic Violence Act.

As per the need of the country the Government of India sanctioned an act named protection of woman against domestic violence Act. To safeguard women from residential cruelty and other in human activities, the central Government, Ministry of women and child Development enacted a demonstration named the protection of Woman from Domestic Violence Act 2005 on seventeenth October, 2006. This Act numbered as 43 of 2005 came into effect on 26th of October, 2006.

Under the PWDVA, the domestic violence is characterized as, any act or omission or commission or conduct of the respondent shall constitute domestic violence in case it harms or endangers the health,

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¹ The Vienna convention: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

² Beijing Declaration 1995: https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf

safety, life limb or well-being whether mental or physical of the aggrieved person or tends to do so and involves physical abuse, sexual abuse, verbal and emotional abuse and economic abuse or b Harasses, harms, injures or jeopardizes the distressed person with an opinion to coerce her or any other person connected to her to meet any unlawful demand for any dowry or other party or valuable security or c) Has the effect of threatening the aggrieved person or any other person in relation to her by any conduct (mentioned in clause (a) or clause (b); or d) Otherwise injures or causes harm, whether physical or mental to the aggrieved person.³

Legal Framework From Protection Of Women From Domestic Violence

Section 498A was introduced in the year 1983 to protect married women from being exposed to cruelty by the husband or his relatives. A punishment extending to 3 years and fine has been prescribed. The expression cruelty has been defined in wide terms so as to include inflicting physical or mental harm to the body or health of the woman and indulging in acts of harassment with a view to coerce her or her relatives to meet any unlawful demand for any property or valuable security. Creating a situation motivating the woman to commit suicide is also one of the elements of cruelty. The offence under S.498A is cognizable, non-compoundable and non-bailable.

In a case of **Preeti Gupta v. State of Jharkhand**⁴, the Supreme Court observed that a serious relook of the provision in warranted by the Legislature. It is a matter of common knowledge that exaggerated versions of the incidents are imitated in a large number of complaints. The trend of over implication is also reflected in a very large number of cases. In an earlier case also **Sushi Kumar Sharma v. UOI** 2005⁵, the Supreme Court saddened that in many instances, complaints under Section 498A were being filed with an oblique motive to week personal Vedanta.

Need for a separate law on domestic violence

In the 1980s the women's movements in India foregrounded the issue of violence against women with a special emphasis on dowry related violence suffered by married women. Consequently criminal law was amended, to create offences criminalizing conduct of cruelty to a married woman both in terms of domestic violence, and dowry-related harassment/deaths. Matrimonial laws provide for cruelty as a ground for divorces. Lawyers working on behalf of women have been.

Under the provisions of criminal law, while the perpetrator of domestic violence could be prosecuted and punished, women's need for shelter, maintenance, custody of children and compensation remained unaddressed.

³ Section 3 in The Protection of Women from Domestic Violence Act, 2005.

⁴ AIR 2010SC 3363.

⁵ AIR 2005SC 3100.

The extent of domestic violence hence extends from physical hurt and sexual violence to causing emotional trauma and economic blackmail.

The extent of domestic violence hence extends from physical hurt and sexual violence to causing emotional trauma and economic blackmail. It is significant that under Indian criminal law, marital rape is not a crime unless the wife is under 15 years of age⁶; however, by including sexual abuse as a form of domestic violence, protection is provided to a wife against sexual abuse under this law. Moreover, the law does not consider only habitual assault to be domestic violence. Even a single act may amount to domestic violence if it falls within any of the categories listed in the law.

In view of probability and estimation the Court here is putting forward a case for the abuse of Section 498A, proposing that the staying 85% of the cases are false/created and are “prone to result in acquittal”

Judicial Attitude Towards Functioning Of Law Relating To Protection Of Women From Domestic Violence

In Commonly Director of Public Prosecutions [1964], Lord Devlin expressed that here specific criminal proceedings constitute an ill-use of process; the court is empowered to refuse to permit the prosecution to continue to trial. The powers controlled by the High Court under section 482 of the Code are wide and the very abundance of the power involves great carefulness in its exercise. The court must be mindful so, as to see that its decision in exercise of this power is in light of sound standards. The inherent power ought not to be exercised to smother a legitimate trial but court's neglecting to utilize the power for progression of equity can likewise prompt grave injustice.

The allegations of the complaint are obligatory to be scrutinized with great carefulness and caution. Experience discloses that long and extended criminal trials lead to hostility, acrimony and bitterness in the relationship amongst the parties. It is additionally a matter of common knowledge that in cases filed by the complainant if the spouse or the spouse's relations needed to remain in jail even for a couple of days, it would demolish the odds of amicable settlement altogether.

It was additionally witnessed that "by misuse of the provision, a new legal terrorism can be unleashed". On 2 July 2014, the Supreme Court decided that the police cannot “automatically” arrest the husband or in-laws of a woman merely upon receipt of a complaint of harassment under Section 498A of the Indian Penal Code and coordinated the police to fulfill themselves about the requirement for an arrest by utilizing the parameters given in Section 41 of the Criminal Procedure Code.

Section 498A must be summoned by a wife or a daughter-in-law or her relative. The different high courts and Supreme Court in India have more than once certified that the greater part of the cases where Section 498A is conjured end up being false, as they are insignificant endeavors of extortion by the wife

⁶ Section 3 of the PWDVA

in a strained marriage. The Law Commission of India and the high courts in diverse states had in the past prescribed revisions to the law. The Law Commissions of India's Report No. 243 on Section 498A IPC dated August 2012, says: "Keeping in view the representations received from different quarters and observations made by the Supreme Court and the High Courts, the Home Secretary, Government of India through his D.O. letter dated 1st September, 2009 requested the Law Commission of India to consider suggesting amendment, if any to Section 498A of Indian Penal Code or other measures to check the alleged abuse of the said provision."

The recent Supreme Court judgment in the case of **Arnesh Kumar v. State of Bihar & Anr**⁷ has by and by converted to light the worry imparted by the larger society about the 'abuse' of Section 498A of the Indian Penal Code and the Dowry Prohibition Act, 1961. This concern has been brought numerous times in the past and the judiciary has gone to the length of marking this 'misuse' especially that of Section 498A, IPC, and legal terrorism in **Sushil Kumar Sharma v. Union of India**⁸. Nonetheless, what has changed this time is that through this judgment the Supreme Court has embraced and legitimized the regular generalization that women misrepresent and fabricate stories of violence to seek vengeance against their spouses and spousal families.

The fact that Section 498A is a cognizable and non-bailable offense has lent it a questionable spot of pride amongst the provisions that are utilized as weapons as opposed to shield by disgruntled wives.

Lalita Kumari Case

In a recent case of **Lalita Kumar v. State of Uttar Pradesh**⁹, the question whether a police officer is bound to register the FIR when a cognizable offence is made out or he has the discretion to conduct some kind of preliminary inquiry before registration of FIR, has been referred to a larger bench of Supreme Court in view of the apparent divergence in views.

Conclusion & Suggestion

This study shows that higher acquittals in 498A cases are also a reflection of the conceptualization of the law and its enforcement. For instance, the definition of "cruelty" does not capture the varied forms of physical, mental, verbal, psychological, sexual, and economic violence experienced by women. As a result of the very vague definition of "cruelty", it is often at the discretion of the police officer to assess whether the sexual, or verbal and psychological, abuse faced by a woman at the hands of her husband or in-laws would qualify as cruelty under Section 498A.

It is worth mentioning here that the Protection of Women from Domestic Violence Act, 2005, takes cognizance of physical abuse, sexual abuse, verbal and emotional abuse, and economic abuse.

⁷ Criminal Appeal No. 1277 of 2014.

⁸ JT 2005 (6) SC 266.

⁹ AIR 2012 SC 1515.

As indicated by the NCRB data presented earlier, Section 498A has decidedly been a deterrent to dowry deaths.

In fact, to check the further deterioration of the situation, provisions against domestic violence need stringent implementation. Section 498A and the Domestic Violence Act shall work as complimentary to each other, and for that, the definition of “cruelty” given in the former shall be aligned with the definition of "domestic violence" provided in the latter. We need to have a broader understanding of the forms of abuse that go beyond physical abuse. The core concept must be the exercise of power and control (Schneider 2008). And finally, the issue of "domestic violence" must not necessarily remain domestic. The notion of domestic violence must be taken out from the "private sphere" and politicized.

Suggestion:

Misuse of Section 498A in many cases has been judicially noticed by the apex court as well as various High Courts. This has also been taken note of by Parliamentary Committee on Petitions. However, misuse by itself is not a ground to abolish S.498A or to denude the Section of its teeth.

Suggestion, it has been recommended that as set out in Para 16 above, sub-section (3) shall be added to Section 41 Cr. PC to prevent arbitrary and unnecessary arrests. The legislative mandate which is not materially different from the spirit underlying Sections 41 and 157 Cr. PC should be put in place in the interests of uniformity and clarity. The compensation amount in Section 358 of Cr. PC shall be increased from one thousand rupees to fifteen thousand rupees and this proposed change is not merely confined to the Section under consideration.

Above all, the need for expeditious disposal of cases under section 498A should be given special attention by the prosecution and Judiciary.
